HE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3935 OF 2005

1st August 2006

Between:

The Zilla Parishad, represented by
Its Chief Executive Officer, Zilla Parishad,
Adilabad, Adilabad District.

.. Petitioner.

And

Sri Syed Abdul Azeem and two others.

.. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3935 OF 2005

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

Heard both the sides and at their request, the Writ Petition itself is taken up for disposal.

The petitioner, which is a Zilla Parishad, filed this Writ Petition under Article 226 of the Constitution of India, seeking for a Writ of Certiorari challenging the order dated 23.09.2003 in O.A.No.6538 of 1995 on the file of the A.P. Administrative Tribunal at Hyderabad, allowing the application filed by the first respondent herein under Section 19 of the A.P. Administrative Tribunals Act, 1985 seeking for fixing his seniority over the second respondent in the category of School Assistant with effect from the date of his initial appointment i.e., 02.08.1982 as Secondary Grade Teacher with all consequential benefits.

It is found from the order that the said application was filed in the year 1995, *inter alia,* on the ground that he was appointed as Secondary Grade Teacher in the year 1982 in Urdu Medium School. It was pointed out that as per the letter issued on 28.08.1981 by the

Director of School Education, A.P., Hyderabad in regard to the Government Memo dated 17.02.1980, instructions were issued to all the DEOs to fill up all the Urdu Teacher posts with trained teachers and if trained teachers are not available, untrained teachers may be appointed as per proceedings dt.28.07.1980. Therefore, the applicant/first respondent claimed that he should have been appointed as School Assistant even on 02.08.1982 since the same post was vacant from the year 1977 onwards and was temporarily held by a Telugu Medium School Assistant. There is no dispute to the fact that the applicant/first respondent passed B.Ed., in December, 1983 and even basing on that qualification, he should have been promoted. However, the case of the first respondent herein was that the petitioner herein sought to promote the second respondent herein, who is a Telugu Medium Teacher. Therefore, the case of the first respondent/applicant is that if had his case been considered properly by the petitioner herein, he would have become senior to the second respondent in the category of School Assistants.

Taking into consideration these submissions, the Tribunal disposed of the application with directions that the applicant has to be given the notional benefits and further the seniority list in the category of School Assistants should be prepared considering the date of promotion of the applicant as School Assistant with effect from the date

of promotion given to the second respondent as Telugu Medium School Assistant. Hence, this Writ Petition.

Though several contentions sought to be urged in this Writ Petition, the main attack is to the effect that the first respondent/original applicant is quite junior to the second respondent and therefore, the question of claiming any relief as such does not arise. The promotion given to the second respondent as School Assistant is perfectly valid. The seniority list in regard to School Assistants has already been prepared and further contended that since the first respondent/original applicant was not in service at the time of promotion of the second respondent as School Assistant, he is not entitled to. Therefore, the promotion is perfectly in order. However, since the order passed by the Tribunal was not complied with, contempt application in C.A.No.535 of 2004 was filed wherein as per the order dated 29.10.2004 which has been directed to implement the order and on re-examination thereof, it was found that the first respondent/ applicant is not eligible for School Assistant from the date of promotion of the second respondent. It was further pointed that as per Rule 34 of the A.P. State & Subordinate Services Rules, 1962, no employee can be promoted to the next higher post unless he is an approved probationer. There is no dispute in regard to the dates of appointment and the other

particulars which have been given. Having regard to the aforesaid reasons, seniority cases should not be re-opened after such a long time. Hence, the Writ Petition.

In the counter-affidavit filed by the first respondent/original applicant, it is stated that even though O.A. was filed long back, no counter-affidavit was filed by the petitioner herein and therefore, appropriate directions were given and thus, no indulgence need be shown in favour of the petitioner herein. Further, it is stated that he should have been appointed as School Assistant with effect from 12.08.1982 as per the directions of the Director of School Education. As the post of school Assistant (Urdu Medium) is vacant even prior to his appointment, he is eligible for next higher promotion with effect from 02.08.1984 but he was promoted as School Assistant as per seniority with effect from 27.03.1986. Therefore, the Writ Petition is liable to be dismissed.

Having considered the submissions made on both the sides and on perusal of the material available on record, it is quite amply clear that there is no dispute to the chequered events and the fact remains that it is only for the first time more details are forthcoming in this Writ Petition on behalf of the petitioner. Though the O.A. was filed in the year 1995, no counter affidavit was filed by the petitioner herein. There is denial to the fact that even much prior to the appointment of

the first respondent/applicant, the said post was vacant and there is no reason as to why the first respondent/applicant should not be considered for the said post and therefore, the Tribunal has rightly held that giving promotion to the second respondent by over looking the first respondent/applicant is not correct and thus, the first respondent/applicant is entitled to all such benefits on par with the second respondent from the date of his promotion. Even now, the present Writ Petition is filed only after filing of Contempt Application by the first respondent/ applicant and no attempt was made to prosecute the case by proper contest when the application was pending before the Tribunal nor any other appropriate applications were filed in time to vary with the order. If there is any error or mistake, there is no serious dispute on behalf of the petitioner that the post was vacant much prior to the date of appointment of the first respondent/applicant and the post in question is that of School Assistant (Urdu Medium) to which the first respondent/original applicant is available whereas the second respondent is not versed in Urdu but he is only a Telugu Medium Teacher and therefore, such post cannot be filled up by any Telugu, Marathi or any other language teacher. Hence, there are no merits in the above Writ Petition.

The Writ Petition is, accordingly, dismissed. However, in the

circumstances of the case, no costs.

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B. PRAKASH RAO, J

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RAMESH RANGANATHAN, J

1st August 2006.
Chvn.